

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 479 OF 2000

The State of Maharashtra	]	...Appellant (orig. Complainant)
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VERSUS

1. Shivaji Daulu Patil, 40 yrs.	]]	
2. Hindurao Daulu Patil, 42 yrs.	]]	
3. Ganpati Daulu Patil, 45 yrs.	]]	
4. Sanjay Ganpati Patil, 22 yrs.	]]	
5. Sunil Dattatraya Patil, 22 yrs.	]]	
6. Ranjit Pandurang Patil, 18 yrs.	]]	
All R/o. Bidro, Tal. Kagal Dist. Kolhapur	]]	...Respondents (Orig. Accused)

Mrs. M.M. Deshmukh, APP for Appellant – State.

Mrs. S.A. Ingawale for Respondent Nos. 1 to 6.

CORAM : S. S. SHINDE &
V. G. BISHT, JJ.

RESERVED ON : 18th FEBRUARY 2020
PRONOUNCED ON : 02nd MARCH 2020

JUDGMENT (PER S. S. SHINDE, J)

1. This Criminal Appeal is directed against the judgment and order dated 22nd November, 1999 in the Sessions Case No. 167 of 1997. passed by the IInd Additional Sessions Judge, Kolhapur thereby acquitting all the Respondents herein – Orig. Accused, of the offences punishable under Sections 147, 148, 302 read with Section 149 of the Indian Penal Code (hereinafter referred to as “IPC”).

2. The prosecution case, in nutshell, is as under:

Shivram Laxman Patil (deceased) as well as the accused are from village Bidri, Taluka Kagal. It is the case of the prosecution that, three years prior to an alleged incident, nephew of Shivram namely Shamrao Dadu Patil purchased the land of one Ganpati Krishna Jitkar to the extent of 17 R from Gat No. 144 situated at Bidri. At the relevant time one Tulsabai Pandurang Patil r/o. Bidri was claiming her right over the said agricultural land and therefore, the dispute between said Tulsabai and Shamrao Dadu Patil was pending in the Civil Court of Kagal. One of the accused i.e. Shivaji Daulu Patil (A 1) was witness in the said civil matter between Tulsabai and Shamrao Dadu Patil whereas Shivram (deceased) was also party in that suit. On account of Civil dispute between both the parties quarrel had taken place prior to the incident between them and it is alleged that, Shivaji Daulu Patil (A 1) had assaulted brother of Shivram (deceased) namely Dadu

Laxman Patil with an axe and since then there is no dispute between both the parties.

3. On 26th October, 1996 at about 8.30 to 9.00 p.m the alleged incident took place. There was an entertainment program of one 'Shahir' at village Bidri on the occasion of Kojagiri Pornima on a stage of Matang community. Shivram (deceased) had been present there to watch the said program. It is alleged that at that time Shivaji Daulu Patil (A 1) assaulted Shivram with an axe and Ganpati Daulu Patil (A 3) gave blows of stick on back and Hindurao Daulu Patil (A 2) gave blow of a sword on right thigh of Shivram. Other accused namely Sanjay (A 4), Sunil (A 5) and Ranjit (A 6) gave fist blows and kicks to Shivram.

4. After occurrence of the said incident, same was informed to the son of Shivram who arrived on the spot with the Maruti Car of one Ajit Patil and an injured Shivram was taken to C.P.R. Hospital, Kolhapur for treatment. After Shivram was admitted in the hospital, medical officer Dr. Sudarshan Patil (PW 6) gave information about the admission of Shivram in the hospital to the Police Chowki of C.P.R. Hospital. After information given to the police, the police head constable Dhaku Nagu Warak (PW 9) working in C.P.R. Police Chowki and who was on duty at the relevant time had been to O.PD Ward along with Police Constable Dhanwade. It is the prosecution case that Dhaku Warak (PW 9) recorded statement of Shivram with the

permission of medical officer Dr. Sudarshan Patil (PW 6). Thereafter, Shivram had put his thumb impression below the said statement. After recording the statement of Shivram, police head constable Dhaku Warak (PW 9) prepared a report which was reduced into writing by Police Constable Dhanwade and forwarded the statement of Shivram along with said report to Laxmipuri Police Station, Kolhapur. After recording the statement, police head constable Dhaku Warak (PW 9) gave information to the control room to give wireless message to the vehicle of Juna Rajawade Police Station so as to inform Executive Magistrate and bring him to C.P.R. Hospital for recording the statement of Shivram. Thereafter, Executive Magistrate arrived at the C.P.R. Hospital and accordingly, Executive Magistrate recorded the statement of Shivram and handed over the copy of the statement to the police head constable Dhaku Warak (PW 9).

5. After receiving the report along with the statement of Shivram , on 26th October, 1996 at about 9.00 a.m. Laxmipuri Police registered the offence at Zero number against all the accused initially under Sections 307, 147, 148 and 149 f the IPC. Thereafter the statement of Shivram, report of police head constable and a carbon copy of dying declaration of Shivram were forwarded to Murgud Police Station for registration of offence against the accused persons and for investigation of the same. Accordingly, at 12.10 p.m. on 27th October, 1996 offence came to be registered against all the

Respondents – Accused under Sections 307, 147, 148 and 149 of IPC. On 12th November, 1996, Shivram succumbed to injuries. Accordingly, after receiving the report about the death of the Shivram Section 302 of IPC was added. After completion of an investigation charge-sheet was filed. As the offence punishable under Section 302 of IPC was exclusively triable by the Court of Sessions, learned JMFC committed the case to the Court of Sessions.

6. After full fledged trial and recording the evidence, the Trial Court by its impugned judgment and order dated 22nd November, 1999 acquitted Respondents / Accused persons from all the charges. Hence, this Appeal against acquittal filed by the State.

7. The learned APP submits that, the incident was witnessed by three eye witnesses so also statements of Shivram i.e. at Exhibit 40 and 44 were recorded. It is submitted that, medical evidence lends support to the prosecution case. The view taken by the Trial Court is not plausible. The learned APP invites our attention to the deposition of eye witnesses so also medical evidence and all other evidence brought on record and submits that Criminal Appeal deserves to be allowed.

8. On the other hand, learned counsel appearing for the Respondents invites our attention to the findings recorded by the Trial Court and submits that plausible view has been taken by the Trial Court. It is

submitted that there is total variance in the versions of eye witnesses. The version of eye witnesses are inconsistent with the statement of Shivram. The versions of eye witnesses do not get support from the medical evidence and therefore, Criminal Appeal deserves to be dismissed.

9. In order to find out whether the death of Shivram was suicidal, homicidal or accidental, the prosecution has examined Dr. Sudarshan Baburao Patil (PW 6) who initially treated Shivram, Dr. Nitin Deshpande (PW 5) and Dr. Arvind Vasant Kogekar (PW 7).

10. Dr. Sudarshan Patil (PW 6) in his deposition stated that on 26th October, 1996 when he was on duty at C.P.R. Hospital, Kolhapur, at about 11.30 p.m. Shivram was brought to said hospital. He examined Shivram in the causality ward and then he was admitted in the hospital. He took note of injuries sustained by Shivram (deceased) in MLC Register. He issued certificate regarding the injuries sustained by Shivram (deceased). He found following injuries on person of Shivram (deceased):-

1. Incised wound over scalp from parietal eminence to just behind left ear.
x. 10 c.m. x 1½ c.m. oblique direction, scalp deep bleeding x clinically no fracture.
2. Incised wound over anterior aspect of right thigh lower 2/3rd
10 c.m. x 3 c.m. Transverse in direction. Bone deep. Bleeding + clinically fracture lower end of right ear.
3. Incised wound over lateral aspect of right thigh lower 1/3rd

- 10 c.m. x 5 c.m. Vertical in direction. Bleeding + query fracture lower end.
4. Incised wound over right arm upper 1/3rd 5 c.m. x 0.5 c.m. skin deep.
5. C.L.W. over lateral aspect of left arm middle 1/3rd 5 c.m. x 0.5 c.m. Transverse, Clinically fracture humerus middle 2/3rd.

He further deposed that, injury no. 1 is possible by an axe, injury nos. 2 to 4 are possible by sickle and injury no. 5 is possible by stick. He deposed that, Shivram (deceased) when admitted in C.P.R. Hospital was conscious. Entry to that effect is taken in MLC Register. He further deposed that, injury no. 1 is on vital part and death was possible due to injury at serial no. 1.

11. During his cross-examination he stated that, he did not mention about the age of the injuries on the certificate. Age of injuries helps to determine the weapons used in causing injuries. He further deposed that, injury no. 1 is possible by single blow of an axe. A blow of an axe might have been given by the assailants to the injured from front side. Injury no. 1 is possible when assailants is in standing position and injured is in sitting position. It is not possible to inflict such injury when injured is in standing position. Direction of injury no. 1 is oblique.

12. The prosecution has examined Dr. Nitin Deshpande (PW 5). He

deposed that, injured Shivram was admitted in his hospital on 28th October 1996. Shivram had sustained fracture injuries and hence he was admitted in his hospital. He further gave details about injuries sustained by Shivram. He deposed that, he had operated fracture shaft humerus of left side. Shivram was admitted in his hospital on 28th October, 1996 and died in his hospital on 12th November, 1996.

13. During his cross-examination he stated that, whenever he used to admit patient in his hospital, history of the case is taken on record either directly from patient or from his relative. On 28th October, 1996 he asked the history to Shivram and noted it on the case papers. He deposed that, Shivram was diabetic patient and no other disease was noted by him. Dr. Anand Kulkarni is well known medical practitioner in Kolhapur city to treat heart disease. He had called Dr. Anand Kulkarni in his hospital. The entry on case paper dated 30th October, 1996 is made by Dr. Anand Kulkarni. It is written by Dr. Anand Kulkarni that, injuries of patient are accidental injuries. He further deposed that, from 28th October, 1996 to 12th November, 1996 Shivram was fully recovered and on 12th November, 1996 he suddenly collapsed.

14. The prosecution has examined Dr. Arvind Vasant Kogekar (PW 7) attached to C.P.R. Hospital, Kolhapur as medical officer at the relevant time. He stated that, on 12th November, 1996 dead body of Shivram Patil

was referred by Juna Rajwade Police Station for conducting post mortem. The dead body was sent from the hospital of Dr. Deshpande. He started post mortem at 3.45 p.m. on said date and completed at 4.45 p.m. He found following injuries on the dead body:

1. Right lower limb leg.
Two wounds $\frac{1}{2}$ cm in diameter near patela.
2. 1" diameter below no. 1 wound.
3. Large incised wound over lower $\frac{1}{3}$ rd of thigh 2"x6".
4. Large incised wound over muscle deep lower $\frac{1}{3}$ rd of right thigh lateral aspect. 4"x2 $\frac{1}{2}$ " " Fracture lower $\frac{1}{3}$ rd right femur.
5. Left upper arm C.L.W. middle $\frac{1}{3}$ rd. $\frac{1}{3}$ rd inch x 1 inch.
6. Sutured wound over left arm posterior aspect olecerema to upper $\frac{1}{3}$ rd of left arm 12"x4" in length.
7. Abrasion 4" length left arm healed.
8. Small sutured healed wound over left arm lateral aspect with abrasion 4" in length.
9. Sutured wound over left occipital area 8" length. No fracture clinically.

He found that all the injuries were ante mortem. According to his opinion death of Shivram Patil might have been caused due to acute pulmonary embolism causing cardio respiratory failure. He prepared post mortem notes and also issued death certificate.

During his cross-examination he stated that, formation of thrombosis is not disease but it is a natural process. Thrombosis process is

possible to anybody.

15. If the evidence of Dr. Nitin Deshpande (PW 5), Dr. Sudarshan Patil (PW 6) and Dr. Arvind Kogekar (PW 7) is read conjointly, in that case it will have to be held that the prosecution has not proved that Shivram died a homicidal death. Dr. Nitin Deshpande (PW 5) who treated Shivram Patil for considerable period in his cross-examination stated that, it is written by Dr. Arvind Kogekar that injuries of patient are accidental injuries. From 28th October, 1996 to 12th November, 1996 patient Shivram Patil was fully recovered and on 12th November, 1996 he suddenly collapsed. Dr. Sudarshan Patil (PW 6) admitted in his cross-examination that he has not mentioned about the ages of injuries on the certificate. Age of injuries helps to determine weapons used for causing injury. He also admitted that the blow of an axe might have been given by the assailants to the injured from front side. Injury no. 1 is possible when assailants is in standing position and injured is in sitting position. It is not possible when injured is in standing position.

16. As already observed Dr. Arving Kogekar (PW 7) in his deposition stated that, death of Shivram Patil might have been caused due to acute pulmonary embolism causing cardio respiratory failure. Formation of thrombosis may cause due to injuries sustained by patient which may result in pulmonary embolism causing cardio respiratory failure. In his

cross-examination he stated that, formation of thrombosis is not disease but it is a natural process. Thrombosis process is possible to anybody.

17. The prosecution examined Dhaku Nagu Warak (PW 9). He deposed before Court that he was attached to Juna Rajwade Police Station as police head constable. On 26th October, 1996 and 27th October, 1996 he was on duty in police chowki of C.P.R. Hospital from 8.00 a.m. to 1.00 p.m. and thereafter from 8.00 p.m. to next day 8.00 a.m. He received wardi about admitting one injured in C.P.R. Hospital namely Shivram Patil. He went to the C.P.R. Hospital along with one Mr. Dhanwade went to O.P.D. Ward of the C.P.R. Hospital. Dr. Sudarshan Patil was present there. He was examining the patient. On enquiry with doctor he had shown the patient to Dhaku Warak (PW 9). Dhaku Warak (PW 9) disclosed his identity to the medical officer and sought his permission to record the statement of Shivram Patil. According to him Shivram was conscious and he disclosed his name. He narrated the contents of the statement of Shivram to constable A.B. Dhanwade and accordingly, A.B. Dhanwade recorded the say of Shivram. Shivram put his thumb impression below his statement. After recording the statement of Shivram, Dhaku Warak (PW 9) prepared the report and said report along with statement was forwarded to Laxmipuri Police Station. He also called executive magistrate to record the statement of Shivram by issuing letter. The executive magistrate came to the hospital and

recorded the statement of Shivram and handed over to Dhaku Warak (PW 9).

During his cross-examination he stated that after arrival of Executive Magistrate, he himself and relatives of injured Shivram Patil had discussion and thereafter Executive Magistrate entered into OPD to record the statement of Shivram Patil. Upon careful perusal of dying declaration we find that there is no endorsement of the medical officer that Shivram was conscious / oriented and in a fit mental and physical condition to give statement before Dhaku Warak (PW 9). Importantly, said Dhanwade (scribe), who recorded the statement of Shivram is not examined by the prosecution. If the injuries on the person of Shivram are minutely seen it is difficult to believe that he was conscious and oriented to give statement before Dhaku Warak (PW 9). In absence of endorsement of medical officer about fitness of Shivram to give such statement, no implicit reliance can be placed on said alleged dying declaration recorded by the Dhaku Warak (PW 9).

18. We find considerable force in the submission of learned counsel appearing for the Respondents that Vardi as given by the medical officer C.P.R. Hospital to Dhaku Warak (PW 9) shows time 00.01 am and Police Head Constable Dhaku Warak (PW 9) recorded the dying declaration before 00.10 am within 9 minutes from Vardhi given by the medical officer to

Dhaku Warak (PW 9) which appears to be humanly impossible. There is no evidence regarding subjective satisfaction of the police head constable about mental health of the patient while recording dying declaration. The said dying declaration recorded by the police head constable Dhaku Warak (PW 9) was treated as first information report which took 9 hours to reach the police station which is just at the distance of one hour long from C.P.R. Hospital and FIR had been registered at 9.00 am.

19. As per prosecution case the second dying declaration (Exh. 44) of Shivram has been recorded by Baburao Powar (PW 10) who was at the relevant time entrusted with the powers of Chief Executive Magistrate. He deposed that he recorded the statement of Shivram on 27th October, 1996 as per his narration.

In his cross-examination he stated that, he did not record the statement in question and answer form. He had seen injuries sustained by the injured Shivram. Size of injures are written by him approximately on his own accord. Therefore, it is clear that Baburao Powar (PW 10) did not record statement of Shivram as per his say and admitted in the cross-examination that on his own accord he mentioned the size of injuries in the said dying declaration. He further admitted in the cross-examination that he himself assured about the weapons which caused injuries. In that view of the matter no reliance whatsoever can be placed on the said dying

declaration.

20. Upon careful perusal of both the dying declarations at Exhibit 40 and 44, Shivram stated that when he was proceeding to attend the program the accused attacked and assaulted him.

21. The prosecution claims that the incident was witnessed by Vitthal Mahadev Patil (PW 3), Bhiku Balwant Patil (PW 4), and Shivaji Vishnu Patil (PW 5). We have carefully perused the evidence of PW 3. According to him deceased was sitting behind him and accused nos. 2 to 6 were also sitting by the side of the Shivram. In all 100 to 125 people were present and program of prize distribution was going on. As already observed Shivram in his statement recorded by the police head constable stated that, when he was proceeding to attend the program the accused attacked and assaulted him however, Vitthal Patil (PW 3) stated that, Shivram was sitting behind him and accused nos. 2 to 6 were also sitting by the side of the Shivram and accused no. 1 came there and assaulted Shivram and other accused nos. 2 to 6 followed him. Therefore, there is complete variance in the version of Vitthal Patil (PW 3) and Shivram. It further appears from his evidence that, he did not try to intervene or help the deceased Shivram. In fact Vitthal Patil (PW 3) is a nephew of the deceased Shivram and had he been present at the spot of incident, in all probability he would have tried to intervene or help deceased Shivram. He has narrated assaults given by the

accused to the Shivram. However, his version does not get support from the medical evidence.

22. Bhiku Balwant Patil (PW 4) deposed that, deceased Shivram was sitting on the back side at a distance of 5 to 7 feet from the place where he was sitting and all the accused except accused no. 1 Shivaji was sitting near Shivram. He also states that, accused Shivaji came running and assaulted Shivram who was sitting nearby him and other accused joined accused no. 1 in assaulting Shivram. However, this version is also contrary to the statement given by Shivram in as much as Shivram stated that, when he was proceeding to attend the program the accused attacked and assaulted him.

In his cross-examination he stated that, accused no. 1 Shivaji gave two to three blows of an axe however, said version is not consistent with the medical evidence and evidence of other eye witnesses. He admitted in his cross-examination that accused no. 2 Hindurao had no sword with him. It is surprising to note that this witness also did not try to help the deceased when the alleged incident was going on in a program where 100 to 125 persons were present. His statement was recorded on the next day of the incident at 11 am like statement of Vitthal Patil (PW 3) was also recorded on the next day at 11 am, when both the witnesses were available during the said night. No explanation has been offered by the prosecution

why there was delay of more than 12 hours in recording their statements.

23. The third eye witness Shivaji Vishnu Patil (PW 8) also deposed that deceased was sitting behind him at distance of 4 to 5 feet. He also deposed that accused no. 1 came running and gave blow with an axe on the thigh of deceased Shivram. The said version of Shivaji Vishnu Patil (PW 8) is not consistent with the alleged dying declaration of Shivram wherein he stated that, when he was proceeding to attend the program the accused attacked and assaulted him. There appears to be inconsistencies in the version of alleged eye witnesses in as much as Shivaji Vishnu Patil (PW 8) stated that, accused no. 2 Hindurao gave only one blow on the leg of Shivram however, other witnesses stated that Hindurao gave two to three blows.

24. If the evidence of aforesaid three eye witnesses is conjointly read they stated that the incident took place when they were watching program along with deceased Shivram. However, in both the dying declarations of deceased Shivram he stated that the accused persons assaulted him when he was proceeding to attend the program. In both dying declarations he has not mentioned the names of eye witnesses. It is also important to note that, if a person is assaulted with an axe on head then it might have resulted into a instantaneous death. However, Shivram died after 16 days and not because of head injury but due to pulmonary

embolism.

25. In the light of discussion in forgoing paragraph, we are of the opinion that, the findings recorded by the Trial Court are in consonance with the evidence brought on record. The alleged seizure of weapons cannot be believed since 1 axe, 1 sword and 1 stick is alleged to have been recovered at the instance of accused no. 1 Shivaji Daulu Patil from open space. It is also important to mention that weapons recovered and clothes seized were not sealed and blood group of deceased Shivram Patil as determined by chemical analyzer was inconclusive. The Trial Court has rightly given benefit of doubt to the Accused – Respondents. The Trial Court has taken a plausible view and therefore, no case is made out to cause interference in the impugned judgment and order of acquittal of the Respondents. Hence, we pass the following order:

ORDER

- A. Criminal Appeal No. 479 of 2000 stand dismissed.
- B. Bail bonds of the Accused – Respondents, if any, stands cancelled.

(V. G. BISHT, J.)

(S. S. SHINDE, J.)